

FILED  
LODGED  
ENTERED  
Honorable Barbara J Rothstein  
RECEIVED  
FEB 13 2003  
MR  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
BY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

RAYMOND LEICH, a resident of Florida,  
derivatively on behalf of EVERGREEN  
STATE RESTAURANT CORP ,

Plaintiff,

vs

CRAIG and JANE DOE EDWARDS,  
Washington residents, and their  
marital community,

Defendants

and

EVERGREEN STATE RESTAURANT  
CORP , a Washington corporation,

Nominal Defendant

CRAIG R EDWARDS, on his own behalf  
and on behalf of EVERGREEN STATE  
RESTAURANT CORP ,

Counterclaimant and  
Third-Party Plaintiff,

vs

NO C03-0108BJR

ANSWER TO COMPLAINT,  
COUNTERCLAIMS AND  
THIRD-PARTY CLAIMS

CV 03 00108 #00000007

ORIGINAL

1 RAYMOND M LEICH, an individual, )  
 2 CLIFFORD L JONES and LINDA JONES, )  
 and their marital community, and )  
 3 EVERGREEN RESTAURANT VENTURES, )  
 INC , a Washington corporation, )  
 4 )  
 5 Counterclaim Defendant and )  
 Third-Party Defendants )  
 6 )

7 Craig R Edwards and Jane Doe Edwards, in answer to plaintiff's  
 8 Complaint, state  
 9

10 **INTRODUCTION**

11 Plaintiff's claims are procedurally defective and without substance  
 12 Plaintiff has not complied, and cannot comply, with Rule 23.1 of the Federal Rules of Civil  
 13 Procedure  
 14

15 Plaintiff's Complaint falsely alleges that plaintiff was unable to get  
 16 Evergreen to take action. Plaintiff could have caused Evergreen to assert the claims that  
 17 are the subject of this action, but plaintiff made a tactical decision not to do so. Plaintiff  
 18 and another director, Clifford L. Jones ("Jones"), are jointly represented by counsel of  
 19 record for plaintiff. Jones is President and Chief Executive Officer of Evergreen. Plaintiff  
 20 and Jones voted down their own proposal for Evergreen to assert claims against  
 21 defendants  
 22

23 On Monday, January 20, 2003, at a meeting of Evergreen's board of  
 24 directors, plaintiff presented defendant Edwards with a letter from Tousley Brain  
 25 Stephens PLLC, a law firm jointly retained by plaintiff and fellow director Jones. The  
 26

1 letter contained a demand on behalf of plaintiff and Jones that "Evergreen's Board of  
2 Director's immediately commence litigation against Mr Edwards " Before receiving this  
3 letter, Edwards was unaware that plaintiff and Jones desired to sue him or that they were  
4 jointly represented by counsel During the same meeting, Jones called for a vote by the  
5 board of directors on whether to commence litigation against Edwards Plaintiff and  
6 Jones both voted against the proposal On the following day, plaintiff filed this action  
7 alleging that he was unable to get Evergreen to take action against Edwards  
8  
9

10 Plaintiff is responsible for the accounting practices that are the subject of  
11 plaintiff's Complaint Plaintiff is a certified public accountant Plaintiff has provided  
12 professional accounting services to Evergreen throughout its existence Evergreen has  
13 paid plaintiff and his accounting firm, Leich & Associates, substantial fees to advise  
14 Evergreen regarding the proper accounting treatment for Evergreen's financial  
15 transactions Plaintiff has been treasurer for Evergreen since at least 1995 Evergreen's  
16 accounting system was set up and maintained in accordance with plaintiff's  
17 recommendations Plaintiff has prepared Evergreen's tax returns since Evergreen was  
18 formed The independent accounting firm of Willett Zevenbergen & Bennett has  
19 regularly audited or reviewed the financial statements for the limited partnerships  
20 managed by Evergreen Plaintiff approved the accounting data that Evergreen provided  
21 to Willett Zevenbergen & Bennett  
22  
23  
24

25 Assuming that plaintiff has any legitimate concerns, which he does not,  
26 plaintiff made no reasonable effort to address such concerns without litigation In April

2002, Jones caused Evergreen to retain the accounting firm of Hagen, Streiff, Newton & Oshiro to review selected accounting transactions. The transactions to be reviewed had been approved by plaintiff and by Willett Zevenbergen & Bennett, the independent accounting firm regularly retained by Evergreen. The Hagen firm took approximately nine months to prepare the report referenced in plaintiff's Complaint. The Hagen firm's report includes transactions dating back more than eight years. Plaintiff prepared his Complaint before the Hagen firm's report was disclosed to defendants or to the independent accounting firm regularly retained by Evergreen. Plaintiff provided a copy of the Hagen firm's report to defendants less than three business days before plaintiff filed this lawsuit.

Plaintiff's Complaint contains no verification as required by Rule 23.1

Plaintiff cannot truthfully provide such verification.

### **I. PARTIES**

1.1 Defendants admit that Raymond Leich ("Leich") is a shareholder and member of the Board of Directors of Evergreen State Restaurant Corp. ("Evergreen"). Defendants lack information sufficient to admit or deny the allegation that plaintiff's legal residence is Florida. Defendants deny all other allegations in paragraph 1.1.

1.2 Defendants admit that Craig R. Edwards ("Edwards") is married, and that he and his wife are residents of Washington. Defendants admit that Edwards is the majority shareholder and Chairman of the Board of Directors of Evergreen. Defendants deny all other allegations in paragraph 1.2.

21 Defendants admit that the amount in controversy exceeds \$75,000,  
exclusive of interest and costs. Defendants deny all other allegations in paragraph 21.

### III. FACTUAL ALLEGATIONS

3 2 Edwards admits that one or more franchise agreements for the  
Limited Partnerships contain the language quoted in paragraph 3 2 of plaintiff's

1 Complaint Defendants deny all other allegations in paragraph 3 2

2 3 3 Edwards admits that Evergreen owns varying interests in the Limited  
3 Partnerships Each of the Limited Partnerships is a franchisee under a franchise  
4 agreement with Outback Defendants deny all other allegations in paragraph 3 3  
5

6 3 4 Defendants deny the allegations in paragraph 3 4

7 3 5 Defendants admit the allegations in paragraph 3 5

8 3 6 Defendants deny the allegations in paragraph 3 6

9 3 7 Defendants admit the allegations in paragraph 3 7

10 3 8 Edwards admits that Jones and Edwards made initial investments in  
11 Evergreen as agreed Edwards admits that his initial investment consisted of more than  
12 one payment Edwards denies that he concealed the timing of his investment from Jones  
13 Defendants deny all other allegations in paragraph 3 8  
14

15 3 9 Edwards admits that Leich acquired one share of Evergreen stock in  
16 1995 for approximately \$13,000 Defendants deny all other allegations in paragraph 3 9  
17

18 3 10 Edwards admits that the shareholders of Evergreen State Restaurant  
19 Corp own 101 shares of stock Edwards owns 70 shares, Jones owns 30 shares of stock,  
20 and Leich owns one share Defendants admit that Edwards, Jones, and Leich comprise  
21 the Board of Directors of Evergreen Defendants admit that the percentages of ownership  
22 stated in paragraph 3 10 of plaintiff's Complaint are correct subject to rounding errors  
23 Defendants deny all other allegations in paragraph 3 10  
24

25 3 11 Defendants deny the allegations in paragraph 3 11 based on lack of  
26

1 information Defendants do not know whether Leich made the alleged statements to  
2 Jones

3 3 12 Defendants deny the allegations in paragraph 3 12

4  
5 3 13 Edwards admits that in approximately August 1995 Chris Sullivan,  
6 CEO of Outback, met with Edwards and Jones regarding the management of Evergreen  
7 and the franchises At that meeting, Sullivan asked that Jones oversee the operations of  
8 Evergreen for six months so that Edwards could participate in an alcohol treatment  
9 program Edwards and Jones concurred Defendants lack information sufficient to admit  
10 or deny the allegation about a private meeting between Jones and Sullivan Defendants  
11 deny all other allegations in paragraph 13

12  
13 3 14 Edwards admits that Sullivan insisted that Edwards seek alcohol  
14 treatment Sullivan indicated that Edwards' failure to obtain such treatment could  
15 jeopardize his ability to participate in Outback franchises Edwards completed an alcohol  
16 treatment program as requested Defendants deny all other allegations in paragraph 3 14

17  
18 3 15 Edwards admits that from approximately August 1995 to February  
19 1996, Jones made various trips to Seattle and devoted additional time to Evergreen's  
20 operations Edwards admits that Jones was compensated as agreed Defendants deny all  
21 other allegations in paragraph 3 15

22  
23 3 16 Edwards admits that Jones was President of Evergreen from  
24 approximately September 1995 until December 1996 On December 5, 1995, Edwards was  
25 elected Chief Executive Officer of Evergreen In December 1996, Edwards was reelected  
26

1 President Defendants deny all other allegations in paragraph 3 16

2 3 17 Defendants deny the allegations in paragraph 3 17

3 3 18 Defendants deny the allegations in paragraph 3 18

4 3 19 Defendants deny the allegations in paragraph 3 19

5 3 20 Edwards admits that Evergreen's operations were "going well" in  
6 1998 and 1999 and that Jones and Leich received appropriate distributions from  
7 Evergreen Edwards denies that Jones and Leich were limited to "minimal information"  
8 relating to Evergreen's operations Defendants deny all other allegations in  
9 paragraph 3 20

10 3 21 Defendants deny the allegations in paragraph 3 21 based on lack of  
11 information

12 3 22 Edwards admits that in 2000 he had a reoccurrence of alcohol  
13 problems Defendants deny all other allegations in paragraph 3 22

14 3 23 Edwards admits that in approximately June 2000 he returned to  
15 alcohol treatment Defendants deny all other allegations in paragraph 3 23

16 3 24 Edwards admits that in September 2000 there was a meeting in  
17 Florida attended by Paul Avery, Marc Drewry, Mark Johnson, Leich, Edwards, and  
18 several limited partners in the Limited Partnerships Defendants deny all other  
19 allegations in paragraph 3 24

20 3 25 Edwards admits that he had a discussion with Jim Woodside in the  
21 lobby of the hotel following the meeting referenced in paragraph 3 24 above Edwards



1 denies that there was any "confrontation" with Woodside Defendants deny all other  
2 allegations in paragraph 3 25 based on lack of information

3  
4 3 26 Defendants deny the allegations regarding a meeting between  
5 Sullivan and Jones based on lack of information Defendants deny the allegations about  
6 what options would cause harm to Evergreen on the ground that those allegations are not  
7 sufficiently detailed to permit a meaningful response Defendants deny all other  
8 allegations in paragraph 3 26  
9

10 3 27 Edwards admits that Outback advised Edwards that he was no  
11 longer acceptable to Outback as Operating Partner Outback advised Edwards that Jones  
12 or Shannon would be acceptable as Operating Partner Outback also stated that  
13 Evergreen could propose other candidates for Operating Partner subject to Outback's  
14 approval Outback did not want Edwards to have continuing involvement in restaurant  
15 operations Jones asked Edwards if he would agree to Jones' assuming responsibility for  
16 Evergreen's operations Jones said that he would look out for Edwards' interests and  
17 protect Edwards' investment Jones said that he would do a better job than Shannon  
18 would Defendants deny all other allegations in paragraph 3 27  
19  
20

21 3 28 Edwards admits that in January 2001, with Edwards' approval, Jones  
22 was elected President and CEO of Evergreen and assumed control of Evergreen's  
23 franchise operations Defendants deny all other allegations in paragraph 3 28  
24

25 3 29 Edwards admits that Jones dismissed certain management and  
26 operational personnel, including persons hired by Jones Edwards also admits that

1 Evergreen was required to deal with sexual harassment claims relating to certain Outback  
2 restaurants. Defendants deny all other allegations in paragraph 3 29

3 3 30 Edwards admits that Evergreen did not pay Washington sales tax on  
4 certain equipment purchased through Outback. There was a factual and legal basis for  
5 Evergreen's actions. Plaintiff concurred in the decision not to pay sales tax on such  
6 purchases. The State of Washington took the position that sales tax was due, and sales  
7 taxes were paid with interest. Defendants deny all other allegations in paragraph 3 30  
8

9 3 31 Defendants deny the allegations in paragraph 3 31

10 3 32 Defendants deny the allegations in paragraph 3 32

11 3 33 Edwards admits that he expressed concern about Jones' handling of  
12 Evergreen's funds and Jones' refusal to permit access to Evergreen's books and records.  
13 Defendants deny all other allegations in paragraph 3 33  
14

15 3 34 Defendants deny the allegations in paragraph 3 34

16 3 35 Edwards admits that he declined to execute certain irrevocable  
17 proxies proposed by Jones. Defendants deny all other allegations in paragraph 3 35  
18

19 3 36 Edwards admits that in May 2002 Outback requested that Evergreen  
20 comply with Section 5.3 of the franchise agreements. Defendants deny all other  
21 allegations in paragraph 3 36  
22

23 3 37 Edwards denies that Jones has made a reasonable proposal for  
24 resolving issues relating to the control of Evergreen. Outback has never required  
25 compliance with Section 5.3 of the franchise agreements. Defendants deny plaintiff's  
26

1 allegations regarding conversations between Jones and Outback based on lack of  
 2 information Defendants deny all other allegations in paragraph 3 37

3 3 38 Defendants deny the allegations in paragraph 3 38

4  
 5 3 39 Edwards admits that in April 2002, Jones caused Evergreen to retain  
 6 the accounting firm of Hagen, Streiff, Newton & Oshiro to review selected accounting  
 7 transactions The transactions to be reviewed had been approved by plaintiff and by  
 8 Willett Zevenbergen & Bennett, the independent accounting firm regularly retained by  
 9 Evergreen With Jones' input, the Hagen firm prepared a report that is critical of  
 10 Evergreen's accounting practices Edwards denies that such criticisms are valid Plaintiff  
 11 is responsible for the accounting practices that are the subject of plaintiff's Complaint  
 12 Defendants deny all other allegations in paragraph 3 39.

#### 13 14 15 **IV. DEMAND HAS BEEN MADE TO THE BOARD**

16 4 1 Edwards admits that on January 20, 2003, plaintiff and Jones  
 17 submitted a demand on Evergreen's Board of Directors to commence litigation against  
 18 Edwards Plaintiff and Jones constitute a majority of Evergreen's Board of Directors  
 19 Jones is President and Chief Executive Officer of Evergreen Plaintiff and Jones voted  
 20 down their own proposal for Evergreen to assert claims against Edwards Plaintiff filed  
 21 this action the following day Defendants deny all other allegations in paragraph 4 1

22  
 23 /////

**V. FIRST CAUSE OF ACTION:  
BREACH OF FIDUCIARY DUTY**

5 1 Defendants incorporate by reference their responses to  
4 paragraphs 1 1 through 4 1 above

5 2 Edwards admits that he is the majority shareholder and Chairman of  
6 the Board of Directors of Evergreen, and that he has the rights available to a person in  
7 those positions Defendants deny that Edwards has misused any rights available to him  
8 Defendants deny all other allegations in paragraph 5 2

10 5 3 Defendants admit that as the majority shareholder and Chairman of  
11 the Board of Directors of Evergreen, Craig Edwards has such duties as are imposed by  
12 Evergreen's Articles of Incorporation and Bylaws and by applicable law Defendants  
13 deny all other allegations in paragraph 5 3

15 5 4 Defendants deny the allegations in paragraph 5 4

16 5 5 Defendants deny the allegations in paragraph 5 5

**VI. SECOND CAUSE OF ACTION:  
CORPORATE WASTE**

19 6 1 Defendants incorporate by reference their responses to  
20 paragraphs 1 1 through 5 5 above

22 6 2 Edwards admits that he is the majority shareholder and Chairman of  
23 the Board of Directors of Evergreen, and that he has the rights available to a person in  
24 those positions Defendants deny that Edwards has misused any rights available to him  
25 Defendants deny all other allegations in paragraph 6 2  
26

6 3 Defendants deny the allegations in paragraph 6 3

6 4 Defendants deny the allegations in paragraph 6 4

**VII. THIRD CAUSE OF ACTION:  
MINORITY SHAREHOLDER OPPRESSION**

7 1 Defendants incorporate by reference their responses to  
paragraphs 1 1 through 6 4 above

7 2 Edwards admits that he is the majority shareholder and Chairman of  
the Board of Directors of Evergreen, and that he has the rights available to a person in  
those positions Defendants deny that Edwards has misused any rights available to him  
Defendants deny all other allegations in paragraph 7 2

7 3 Defendants admit that as the majority shareholder and Chairman of  
the Board of Directors of Evergreen, Craig Edwards has such duties as are imposed by  
Evergreen's Articles of Incorporation and Bylaws and by applicable law Defendants  
deny all other allegations in paragraph 7 3

7 4 Defendants deny the allegations in paragraph 7 4

7 5 Defendants deny the allegations in paragraph 7 5

7 6 Defendants deny the allegations in paragraph 7 6

7 7 Defendants deny the allegations in paragraph 7 7

7 8 Defendants deny the allegations in paragraph 7 8

**VIII. FOURTH CAUSE OF ACTION:  
INJUNCTIVE RELIEF**

8 1 Defendants incorporate by reference their responses to

1 paragraphs 1 1 through 7 8 above

2 8 2 Edwards admits that he is the majority shareholder and Chairman of  
3 the Board of Directors of Evergreen, and that he has the rights available to a person in  
4 those positions Defendants deny that Edwards has misused any rights available to him  
5 Defendants deny all other allegations in paragraph 8 2

7 8 3 Defendants admit that as the majority shareholder and Chairman of  
8 the Board of Directors of Evergreen, Craig Edwards has such duties as are imposed by  
9 Evergreen's Articles of Incorporation and Bylaws and by applicable law Defendants  
10 deny all other allegations in paragraph 8 3

12 8 4 Defendants deny the allegations in paragraph 8 4

13  
14 **IX. FIFTH CAUSE OF ACTION:**  
15 **CONVERSION**

16 9 1 Defendants incorporate by reference their responses to  
17 paragraphs 1 1 through 8 4 above

18 9 2 Edwards admits that he is the majority shareholder and Chairman of  
19 the Board of Directors of Evergreen, and that he has the rights available to a person in  
20 those positions Defendants deny that Edwards has misused any rights available to him  
21 Defendants deny all other allegations in paragraph 9 2

23 9 3 Defendants deny the allegations in paragraph 9 3

24 9 4 Defendants deny the allegations in paragraph 9 4

25 /////

**X. SIXTH CAUSE OF ACTION  
UNJUST ENRICHMENT**

10 1 Defendants incorporate by reference their responses to  
11 paragraphs 1 1 through 9 4 above

12 10 2 Edwards admits that he is the majority shareholder and Chairman of  
13 the Board of Directors of Evergreen, and that he has the rights available to a person in  
14 those positions Defendants deny that Edwards has misused any rights available to him  
15 Defendants deny all other allegations in paragraph 10 2

16 10 3 Defendants deny the allegations in paragraph 10 3

17 10 4 Defendants deny the allegations in paragraph 10 4

18 10 5 Defendants deny the allegations in paragraph 10 5

**XI. MISCELLANEOUS**

19 11 1 Defendants deny all allegations not admitted above

20 11 2 Defendants reserve the right to amend this answer following  
21 discovery

**DEFENSES**

22 Defendants assert the following defenses

23 1 Plaintiff's Complaint fails to state a claim upon which relief can be  
24 granted

25 2 This action was brought collusively to confer jurisdiction on a court  
26 of the United States that it would not otherwise have

1                   3     Plaintiff's claims are barred by plaintiff's failure to comply with  
2 Rule 23 1 of the Federal Rules of Civil Procedure

3                   4     Plaintiff's claims are barred by the doctrines of waiver and estoppel

4                   5     Plaintiff's claims are barred by lack of standing

5                   6     Plaintiff's claims are barred by applicable statutes of limitation

6                   7     Plaintiff's claims are barred by plaintiff's wrongful conduct

7                   8     Plaintiff's claims are barred by plaintiff's unreasonable and  
8 uncooperative conduct

9                   9     Plaintiff's claims are barred by plaintiff's failure to join an  
10 indispensable party.

11                                   **COUNTERCLAIMS AND THIRD-PARTY CLAIMS**

12                                   Craig R Edwards, on his own behalf and on behalf of Evergreen State  
13 Restaurant Corp , asserts the following counterclaims and third-party claims against  
14 Raymond M Leich, Clifford L Jones and Linda Jones, husband and wife, and Evergreen  
15 Restaurant Ventures, Inc , a Washington Corporation

16   **Parties**

17                   1     Counterclaimant and third-party plaintiff, Craig R Edwards  
18 ("Edwards"), is a resident of Washington Edwards owns approximately 69 percent of the  
19 stock of Evergreen State Restaurant Corp

20                   2     Counterclaim and third-party defendant Raymond M Leich  
21 ("Leich") is a resident of a state other than Washington Leich owns approximately one  
22





## Background

7 Edwards was a partner in the accounting firm of DeLoitte & Touche for approximately 23 years. He served a variety of clients in the restaurant industry, including Outback Steakhouse, Inc. In 1994, he resigned from DeLoitte & Touche to found Evergreen. The business plan for Evergreen was to invest in and operate Outback Steakhouse Restaurants in the Northwest. At the time, Outback had no restaurants in this part of the country.

8 Evergreen opened its first Outback Steakhouse Restaurant in March 1995. From 1995 through 2000, Evergreen opened 27 Outback Steakhouse Restaurants in Washington, Oregon, Alaska and Idaho.

9 Evergreen is a participant in joint ventures that are the general partners in Evergreen State Limited Partnerships 1 through 27 (the "Limited Partnerships"). Each of the Limited Partnerships owns and operates an Outback Steakhouse restaurant pursuant to a franchise agreement with Outback Steakhouse of Florida, Inc. ("Outback").

10 Edwards was President or CEO of Evergreen from the time Evergreen was founded in 1994 until January 2001, except for a brief period of approximately three months in 1995. Edwards was President of Evergreen from 1994 until September 1995, and from December 1996 until January 2001. Edwards was CEO of Evergreen from December 1995 until January 2001. Jones was President of Evergreen from September 1995 until December 1996. Leich has been Treasurer of Evergreen from

1 1995 to the present

2           11 While Edwards was in charge, Evergreen's operations were  
3 successful. In 1998, for example, Outback selected Evergreen as "Franchise of the Year "

4  
5 **Operating Partner**

6           12 All the Outback Steakhouse Restaurant Franchise Agreements for the  
7 Limited Partnerships provide that if the Franchisee is not an individual, the Franchisee  
8 will designate an individual to serve as the "Operating Partner " The Franchise  
9 Agreements provide that the Operating Partner will be a person acceptable to both  
10 Franchisee and Franchisor

11  
12           13 Edwards was designated as Operating Partner for all the Limited  
13 Partnerships. Edwards' designation as Operating Partner was approved by the Limited  
14 Partnerships and by Outback

15  
16 **Change in Operating Partner**

17           14 In 2000, Evergreen's operations were impacted by a general economic  
18 downturn. At the end of 2000, Outback asked Evergreen to name a new Operating  
19 Partner

20  
21           15 Outback told Evergreen that Jones would be acceptable as Operating  
22 Partner for the Limited Partnerships

23           16 Outback told Evergreen that Tom Shannon, an individual who is  
24 Operating Partner for other Outback Steakhouse Restaurants, would also be acceptable as  
25 Operating Partner for the Limited Partnerships  
26

1                   17     Jones asked Edwards to agree to Jones' assuming responsibility for  
2 Evergreen's operations. Jones said that he would look out for Edwards' interests and  
3 protect Edwards' investment  
4

5                   18     In January 2001, Edwards, Jones and Leich elected Jones President  
6 and CEO of Evergreen  
7

8                   19     In January 2001, Evergreen designated Jones as Operating Partner for  
9 the Limited Partnerships  
10

11                  20     Outback approved Evergreen's designation of Jones as Operating  
12 Partner for the Limited Partnerships  
13

#### 14                                   **Evergreen Ventures**

15                  21     In January 2001, Jones formed a new Washington corporation named  
16 Evergreen Restaurant Ventures, Inc. ("Evergreen Ventures")  
17

18                  22     Jones is President and CEO of Evergreen Ventures  
19

20                  23     Jones is the controlling shareholder of Evergreen Ventures  
21

22                  24     Jones and Leich are directors of Evergreen Ventures  
23

24                  25     Leich is Treasurer of Evergreen Ventures  
25

26                  26     Jones proposed that Evergreen Ventures, as opposed to Evergreen,  
own an interest in and manage all additional Outback Steakhouse Restaurants opened in  
the Northwest  
27

28                  27     Jones proposed that Evergreen use Evergreen Ventures to provide  
29 management and accounting services to Evergreen's Limited Partnerships  
30

**Corporate Legal Counsel**

28 In January 2001, Jones directed Evergreen's legal counsel, Short Cressman & Burgess PLLC ("Short Cressman"), to prepare legal documents needed to accomplish Jones' objectives

29 Short Cressman prepared a checklist of agreements and other items that would be required to accomplish Jones' objectives

30 Short Cressman advised Jones and Edwards that Short Cressman had conflicts of interest with respect to the differing interests of Evergreen and Evergreen Ventures and the shareholders of those entities

31 Short Cressman advised the shareholders of Evergreen and Evergreen Ventures to consult with independent counsel

**Operations of Evergreen Ventures**

32 Following Short Cressman's advice that the shareholders consult with independent counsel, Jones proceeded to implement his plans without any agreement between Evergreen and Evergreen Ventures or among the shareholders of those entities

33 Since January 2001, Evergreen Ventures has opened five Outback Steakhouse Restaurants. Evergreen Ventures owns controlling interests in and manages those restaurants. Evergreen had largely completed development of all those restaurants before Jones transferred them to Evergreen Ventures

34 Evergreen Ventures has employed all of Evergreens' employees

1                   35     Evergreen Ventures has taken the office space used by Evergreen

2                   36     Evergreen Ventures is using Evergreen's former employees to  
3 provide management and accounting services to Evergreen's Limited Partnerships  
4

5                   37     Jones is depositing Evergreen's funds into Evergreen Ventures' bank  
6 accounts

7                   38     Jones and Evergreen Ventures are using funds belonging to  
8 Evergreen for the operations of Evergreen Ventures  
9

10                  39     Jones has denied Edwards access to the books and records of  
11 Evergreen

12                  40     Leich has supported and assisted Jones in the above activities  
13

14                                   **Management Fees**

15                  41     All the partnership agreements for the Limited Partnerships provide  
16 that Evergreen will receive a fee based on a percentage of the gross sales of the Outback  
17 Steakhouse Restaurants for providing management and accounting services to the  
18 Limited Partnerships ("Management Fees")  
19

20                  42     All Management Fees from the Limited Partnerships are property of  
21 Evergreen

22                  43     When Edwards was Operating Partner, all Management Fees from  
23 the Limited Partnerships were paid to Evergreen. Evergreen paid Edwards a salary  
24

25                  44     Jones has taken the position that Jones' status as Operating Partner  
26 excuses him from paying the Management Fees from the Limited Partnerships to

1 Evergreen Instead of taking a salary from Evergreen, Jones is directing all the  
2 Management Fees to Evergreen Ventures Jones and Evergreen Ventures then refuse to  
3 account for their use of the Management Fees  
4

5 45 Jones is using all Management Fees from the Limited Partnerships for  
6 the benefit of Jones and Evergreen Ventures

7 46 Jones has refused to use any of the Management Fees from the  
8 Limited Partnerships to pay Evergreen's expenses  
9

#### 10 **Corporate Credit**

11 47 Jones and Evergreen Ventures are using the credit of Evergreen and  
12 the Limited Partnerships for the benefit of Evergreen Ventures

13 48 Jones and Evergreen Ventures have pledged the assets of Evergreen  
14 and the Limited Partnerships for the benefit of Evergreen Ventures  
15

#### 16 **Conflicts of Interest**

17 49 Jones has a conflicting interest as defined by RCW 23B 08 700 with  
18 respect to any transaction between Evergreen and Evergreen Ventures  
19

20 50 Leich has a conflicting interest as defined by RCW 23B 08 700 with  
21 respect to any transaction between Evergreen and Evergreen Ventures

22 51 To the extent Leich and Jones as officers and directors of Evergreen  
23 purport to have approved any transaction benefiting Evergreen Ventures, such purported  
24 approval is invalid  
25

26 52 Jones has a conflicting interest as defined by RCW 23B 08 700 with

1 respect to any transaction between Evergreen and Jones

2           53     To the extent Jones as an officer and director of Evergreen purports to  
3 have approved any transaction benefiting Jones, such purported approval is invalid  
4

5           54     Leich has a conflicting interest as defined by RCW 23B 08 700 with  
6 respect to any transaction between Evergreen and Leich

7           55     To the extent Leich as an officer and director of Evergreen purports to  
8 have approved any transaction benefiting Leich, such purported approval is invalid  
9

10                           **Accounting Malpractice**

11           56     Leich is a certified public accountant

12           57     Leich has provided professional accounting services to Evergreen  
13 throughout its existence  
14

15           58     Evergreen has paid Leich and his accounting firm substantial fees to  
16 advise Evergreen regarding the proper accounting treatment for Evergreen's financial  
17 transactions

18           59     Leich has been Treasurer for Evergreen since at least 1995  
19 Evergreen's accounting system was set up and maintained in accordance with plaintiff's  
20 recommendations  
21

22           60     Leich has prepared Evergreen's tax returns since Evergreen was  
23 formed  
24

25           61     The independent accounting firm of Willett Zevenbergen & Bennett  
26 has regularly audited or reviewed the financial statements for the limited partnerships



1 managed by Evergreen

2                   62     Leich has approved the accounting data that Evergreen provided to  
3 Willett Zevenbergen & Bennett  
4

5                   63     Leich failed to make proper disclosure of conflicts of interest and to  
6 obtain effective waivers of such conflicts when rendering accounting services to  
7 Evergreen  
8

9                   64     To the extent that Evergreen may be determined to have used any  
10 improper accounting practice, Leich is liable for accounting malpractice

11                   65     Whether or not Evergreen is determined to have used any improper  
12 accounting practice, Leich should be required to disgorge to Evergreen all fees paid to  
13 him for accounting services  
14

15                                   **Harm to Evergreen and Edwards**

16                   66     The actions of Jones, Leich and Evergreen Ventures have caused  
17 money damages to Evergreen and Edwards

18                   67     The actions of Jones, Leich and Evergreen Ventures have caused  
19 irreparable harm to Evergreen and Edwards  
20

21                   68     The actions of Jones, Leich and Evergreen Ventures are causing  
22 continuing harm to Evergreen and Edwards

23                                   **Unjust Enrichment**

24                   69     Jones, Leich and Evergreen Ventures have been unjustly enriched by  
25 their actions  
26

**Refusal to Cooperate**

70 Jones and Leich have refused to make any reasonable effort to resolve the differences of the parties

71 Edwards proposed a shareholders agreement but received no meaningful response Jones has never proposed any shareholders agreement to Edwards

72 Jones has indicated a desire to purchase some or all of Edwards' stock in Evergreen, but Jones refused to propose a price Jones insisted that Edwards propose a price When Edwards proposed a price, Jones criticized Edwards' proposed price as excessive

73 Edwards indicated to Jones and Leich that Edwards would prefer not to take legal action Edwards suggested to Jones and Leich that the parties use a third party mediator in an effort to resolve their differences Jones and Leich responded with this lawsuit

74 Leich's claims against Edwards are without merit Leich's claims were asserted solely for tactical purposes Leich and Jones are jointly represented by Leich's counsel of record It appears that Jones was not named as a plaintiff because naming Jones would preclude diversity jurisdiction

**Derivative Action**

75 Edwards was a shareholder of Evergreen at the time of the wrongful actions of Jones, Leich and Evergreen Ventures

76 The counterclaims and third-party claims are not collusive claims to

1 confer jurisdiction on a court of the United States that it would not otherwise have

2                   77     Edwards has made repeated requests that Jones, Leich and Evergreen  
3 Ventures cease their wrongful conduct  
4

5                                   **Causes of Action**

6                   78     Jones' actions constitute self-dealing, breach of fiduciary duties,  
7 conversion, corporate waste, misappropriation of corporate assets, misappropriation of  
8 corporate opportunities, unjust enrichment, and otherwise violate Jones' duties as an  
9 officer and director of Evergreen  
10

11                   79     Leich's actions constitute self-dealing, breach of fiduciary duties,  
12 conversion, corporate waste, misappropriation of corporate assets, misappropriation of  
13 corporate opportunities, unjust enrichment, and otherwise violate Leich's' duties as an  
14 officer and director of Evergreen   Leich's actions also constitute negligence and  
15 accounting malpractice  
16

17                   80     Evergreen Ventures' actions constitute conversion, interference with  
18 contractual relationships, interference with business opportunities, unjust enrichment,  
19 and otherwise violate applicable law  
20

21                                   **PRAYER FOR RELIEF**

22                   WHEREFORE, defendants, counterclaimant and third-party plaintiff  
23 request the following relief against Leich, Jones and his marital community, and  
24 Evergreen Ventures  
25

26                   1     Dismissal with prejudice of all claims asserted by Leich either on his

own behalf or on behalf of Evergreen ,

2 An award of damages in favor of Edwards and Evergreen in an  
amount to be proven at trial,

3 Disgorgement to Evergreen of all fees paid to Leich for accounting  
services,

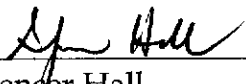
4 Injunctive relief as may be necessary to stop the continuing  
misconduct of Leich, Jones and Evergreen Ventures,

5 An award of costs and reasonable attorneys' fees, and

3 Such other relief as the Court deems just and proper

DATED this 13<sup>th</sup> day of February, 2003

HALL ZANZIG CLAFLIN McEACHERN PLLC

By   
Spencer Hall  
WSB No 6162  
Attorneys for Defendants, Counterclaimant  
and Third-Party Plaintiff

VERIFICATION

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

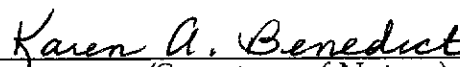
CRAIG R EDWARDS, being duly sworn, states

That he is the counterclaimant and third-party plaintiff in the above-captioned matter, that he has read the counterclaim and third-party claims and believes the allegations set forth in these claims to be true

  
Craig R Edwards

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of February, 2003



  
(Signature of Notary)  
KAREN A. BENEDICT  
(Printed Name)

Notary Public in and for the State of Washington, residing at Bellum  
My Commission expires 3-1-05

FILED  
LODGED  
RECEIVED  
FEB 13 2003 MR  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

RAYMOND LEICH, a resident of Florida,  
derivatively on behalf of EVERGREEN  
STATE RESTAURANT CORP.,

Plaintiff,

vs

CRAIG and JANE DOE EDWARDS,  
Washington residents, and their  
marital community,

Defendants,

and

EVERGREEN STATE RESTAURANT  
CORP., a Washington corporation,

Nominal Defendant

NO C03-0108BJR

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)

) ss

COUNTY OF KING )

KAREN A BENEDICT, being first duly sworn, states

1 I am an employee of Hall Zanzig Claflin McEachern PLLC

Karen A. Benedict  
Karen A Benedict

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of February, 2003



(Signature of Notary)

Sherrice A. Pience (Signature of N)

Notary Public in and for the State of  
Washington, residing at Federal Way  
My Commission expires 2-12-05